

REMARKS

It is noted that the claim amendments herein are intended solely to more particularly point out the present invention for the Examiner, and not for distinguishing over the prior art or the statutory requirements directed to patentability. That is, the rejection currently of record indicates that the Examiner is somewhat confused as to the significance of the claim language. Applicants have attempted to clarify the claim language for the benefit of the Examiner.

It is further noted that, notwithstanding any claim amendments made herein, Applicants' intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

Claims 1-48 are all of the claims pending in the present Application. Claims 1-7, 13, 21, 40, and 47 stand rejected under 35 USC §103(a) as unpatentable over US Patent 6,459,682 to Ellesson et al., further in view of US Patent 5,700,173 to Gossler et al. Claims 8-12, 14-20, 22-39, 41-46, and 48 stand rejected under 35 USC §103(a) as unpatentable over Ellesson/Gossler, further in view of US Patent 5,719,854 to Choudhury et al.

These rejections are respectfully traversed in view of the following discussion.

I. THE CLAIMED INVENTION

As described and claimed, for example, by claim 1, the present invention is directed to a method for managing and controlling allocation and de-allocation of resources based on a guaranteed amount of resource and additional resources based on a best effort for a plurality of customers. Server resources are dynamically allocated for a plurality of customers, such that the resources received by a customer are dynamically controlled and said customer receives a guaranteed minimum amount of resources as specified under a service level agreement (SLA). The service level agreement includes at least one parameter defining conditions of dynamically allocating and de-allocating said server resources.

The prior art of record fails to teach or suggest this concept of dynamic allocation of server resources as based on a service level agreement that includes one or more parameters that define dynamic allocation.

An advantage of the present invention is that it allows the server resources' owner to develop a business contract that defines how the resources will be allocated/de-allocated/re-allocated in a simple explanation to customers and in a manner that dynamic allocation calculations are much simpler, since the conditions of dynamic allocation changes are defined by specific parameters that are included in the service level agreement.

That is, there is no need to expend tremendous calculation effort to attempt to optimize a very complicated problem (e.g., contrast the present invention with the calculations involved in Choudhury), if such allocation parameters are not used.

II. THE OBJECTION TO THE TABLES

The Examiner and Draftsperson object and/or reject to Tables 1-5 and require that the tables be converted into figures. This requirement is understood to state that the USPTO is no longer following the procedure defined by 37 C.F.R. §1.58 "Chemical and Mathematical Formulae and Tables".

Applicants traverse that this arbitrary requirement to convert "tables" into "figures" is proper. Tables are routinely submitted as part of the specification, either embedded in the text or as pages separate from the text. This very unusual evaluation process in which each Examiner/Draftsperson arbitrarily requires that tables be converted into figures would create total unpredictability in preparation of patent applications and it would be very expensive to constantly change labels on tables/figures and the associated specification text pages.

Applicants submit that Tables 1-5 fully comply with 37 C.F.R. §1.58 and that, therefore, no conversion is required.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this requirement.

III. THE PRIOR ART REJECTIONS

The Examiner asserts that US Patent 6,459,682 to Ellesson et al. (commonly assigned), further in view of US Patent 5,700,173 to Gossler et al (commonly assigned), renders obvious claims 1-7, 13, 21, 40, and 47, and, furthermore, that Ellesson/Gossler, further in view of Choudhury, renders obvious claims 8-12, 14-20, 22-39, 41-46, and 48.

However, the Examiner seems confused about the significance of the claim language.

That is, an exemplary key aspect of the present invention is the control of allocation of resources, based on terms of a service level agreement. This is a different concept than merely controlling IP traffic based on a service level agreement (see, e.g., Ellesson).

A second exemplary aspect of the present invention is that it provides a method of defining a business relationship by providing the concept that the service level agreement actually contains one or more parameters that define conditions for the allocation of resources. This new concept of the present invention is not taught, suggested, or even hinted at in Ellesson, Gossler, or Choudhury.

More specifically, the throttling of IP traffic (the technique taught in Ellesson) is not an allocation/de-allocation of server resources. Indeed, throttling IP traffic is among one of many techniques used in the present invention (see, e.g., claim 20). Although Gossler and/or Choudhury arguably may be closer to the present invention than Ellesson in that server resources are allocated, neither of these two references teaches, suggests, or even hints at the concept of incorporating, in the service level agreement, one or more parameters that define the dynamic allocation of server resources.

The advantage of this new concept is that allocation calculations are much more simple and the customer is aware of and has agreed to explicit conditions for allocation of resources.

Hence, turning to the clear language of the claims, there is no teaching or suggestion of “... method for managing and controlling allocation and de-allocation of resources ... and said customer receives a guaranteed minimum amount of resources as specified under a service level agreement (SLA), said service level agreement including at least one parameter defining conditions of dynamically allocating and de-allocating said server resources.” The

remaining independent claims contain similar language as claim 1, with the exception of independent claim 48.

However, contrary to statements in the rejection currently of record, claim 48 defines details of conditions of resource allocation that neither Ellesson nor Gossler teach, suggest, or even hint at. If the Examiner maintains the rejection currently of record, Applicants request that the Examiner identify specific line and column locations for each claim limitation.

For the reasons stated above, the claimed invention is fully patentable over the cited references.

Further, the other prior art of record has been reviewed, but it too, even in combination with the Ellesson, Gossler, and Choudhury references, fails to teach or suggest the claimed invention.

IV. FORMAL MATTERS AND CONCLUSION

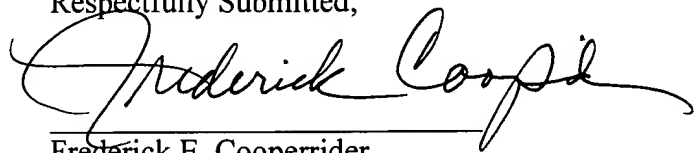
In view of the foregoing, Applicant submits that claims 1-48, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Date: 10/10/03

Respectfully Submitted,



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